Acorn Building Components, Inc., Debtor-in-Possession *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 2194. Case 7–CA–33720

March 29, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 2194 (the Charging Union), on September 11, 1992, the General Counsel of the National Labor Relations Board issued a complaint on October 26, 1992, against Acorn Building Components, Inc. (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 1, 1993, the General Counsel filed Motions to Transfer Cases to the Board and for Default Summary Judgment. On March 5, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that although Respondent had been advised of the consequences of failing to file an answer, the Respondent nevertheless withdrew its previously filed answer by notice dated February 4, 1993. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the consolidated complaint must be considered to be admitted to be true.[1]

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with offices and places of business in Quincy, Coldwater, and Detroit, Michigan has been engaged in business as a window and door manufacturer. During the calendar year ending December 31, 1991, Respondent in conducting its business operations purchased and received at, and sold and shipped from, its Quincy and Coldwater, Michigan facilities goods valued in excess of $50,000 directly from and to points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 2194 have been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees including shipping and receiving employees employed by Respondent at its plants located at 87 Taylor Street, Quincy, Michigan; 42 Cole Street, Quincy, Michigan; and 696 Race Street, Coldwater, Michigan; but excluding all office clerical employees, technical employees, professional employees, truck drivers, guards and supervisors as defined in the Act.

On or about January 11, 1983, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO was certified as the exclusive collective-bargaining representative of the employees in the unit in Case 7–RC–16645.

Since on or about January 11, 1983, and at all material times, the Charging Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Charging Union has been recognized as the exclusive representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 14, 1990, until April 23, 1994.

At all times since January 11, 1983, based on Section 9(a) of the Act, the Charging Union has been the exclusive collective-bargaining representative of the employees in the unit.

From about November 1991 until on or about August 28, 1992, Respondent unilaterally failed to continue in effect all the terms and conditions of the 1990–1994 agreement by failing to provide employees in the unit with the contractually required (1) Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits; (2) wages earned during the week ending April 4, 1992; and (3) vacation pay benefits accrued and earned prior to April 9, 1992; and by failing to remit to the Charging Union dues which had been deducted from unit employees' pay in respect to the months of July and August 1992.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to, or the concurrence of the Charging Union and without affording the Charging Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct on the unit employees.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, from November 1991 until August 28, 1992, to provide employees in the unit with the contractually required (1) Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits; (2) wages earned during the week ending April 4, 1992; and (3) vacation pay benefits accrued and earned prior to April 9, 1992, we shall order the Respondent to make whole its unit employees for its failure to pay such contractual wages and benefits as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in New *Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing to remit to the Charging Union dues which had been deducted from unit employees' pay in respect to the months of July and August 1992, we shall order the Respondent to remit such dues to the Charging Union, with interest as computed under *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Acorn Building Components, Inc., Quincy, Coldwater, and Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1990–1994 collective-bargaining agreement by failing to provide unit employees with the contractually required Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits, earned wages, and accrued and earned vacation pay benefits, and by failing to remit to the Charging Union dues which had been deducted from unit employees' pay.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole unit employees for any loss of wages and benefits suffered by them as a result of its failure, from November 1991 until August 28, 1992, to provide them with contractually required (1) Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits; (2) wages earned during the week ending April 4, 1992; and (3) vacation pay benefits accrued and earned prior to April 9, 1992, in the manner set forth in the remedy section of this decision.

(b) Remit to the Charging Union dues which had been deducted from unit employees' pay in respect to the months of July and August 1992, as provided by the 1990–1994 collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Quincy, Coldwater, and Detroit, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of the 1990–1994 collective-bargaining agreement by failing to provide employees in the unit with the contractually required Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits, earned wages, and accrued and earned vacation pay benefits, and by failing to remit to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 2194 dues which had been deducted from unit employees' pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole unit employees for any loss of wages or benefits suffered by them as a result of our failure, from November 1991 until August 28, 1992, to make contractually required (1) Acorn Building Components Health Benefit Plan and other benefits, including medical, dental, surgical, hospitalization, prescription drugs, sickness and accident and life insurance benefits; (2) wages earned during the week ending April 4, 1992; and (3) vacation pay benefits accrued and earned prior to April 9, 1992.

WE WILL remit to the Charging Union dues which had been deducted from unit employees' pay in respect to the months of July and August 1992, as provided by the 1990–1994 collective-bargaining agreement.

ACORN BUILDING COMPONENTS, INC.